

**IN THE SUPERIOR COURT OF COBB COUNTY
 STATE OF GEORGIA**

JONATHAN RIVERA,)	
)	
Plaintiff,)	CASE NO. 21-1-01795
)	
v.)	
)	
GINA SCHARLE,)	
)	
Defendant.)	

EMERGENCY MOTION TO VACATE TEMPORARY ORDER AND
EMERGENCY MOTION TO MODIFY CUSTODY

COMES NOW Plaintiff in the above-styled action, JONATHAN RIVERA (“Father”), by and through counsel, and files this motion requesting that this Court vacate and set aside its Order signed April 16, 2021 and filed April 19, 2021, showing this Court as follows:

Facts

1.

This Court granted Father primary physical custody pursuant to an *Ex Parte Order Granting Temporary Modification of Custody* on March 1, 2021. (**Exhibit 1**). This Court further granted Father a *Family Violence Ex Parte Order* (TPO) against Christopher Curry on March 5, 2021. (**Exhibit 2**). The March 5, 2021 TPO was dismissed **without prejudice** on March 30, 2021. Father was *pro se* at that hearing and Mr. Curry was represented by counsel.

2.

Christopher Curry, plaintiff in companion Case No. 21-1-02536, filed his *Petition For Equitable Caregiver Status, Custody and/or Visitation* with this Court on March 31, 2021. Defendant Jonathan Rivera-Cueva, also known as JONATHAN RIVERA (“Father”), filed his Acknowledgment of Service on April 12, 2021 by and through counsel, which allows **60 days** for

Father to file his answer pursuant to O.C.G.A. § 9-11-4(d)(5). Defendant Gina Scharle (“Mother”) filed her Acknowledgment of Service into that case on April 13, 2021.

3.

On April 15, 2021, Father filed his *First Answer To Plaintiff’s Petition For Equitable Caregiver Status* into Case No. 21-1-02536 “**without waiver of his right to file an Answer at the time due for filing an Answer in this matter**” and further stating that Mr. Curry “lacks standing pursuant to O.C.G.A. § 19-7-3.1.”

4.

On April 15, 2021, Judge Flournoy who was the presiding judge Case No. 21-1-01795 and Case No. 21-1-02536, entered the *Temporary Order* for custody and visitation with a finding a of standing in Mr. Curry’s favor despite Father’s objections presented in both his First Answer and at the hearing on the matter. In making his ruling from the bench on April 15, 2021, it was impossible for Judge Flournoy to have read and considered Father’s First Answer and Affidavit filed that very same day. Judge Flournoy has since been removed from both Case No. 21-1-01795 and Case No. 21-1-02536 pursuant to Father’s Rule 25.1 *Motion For Recusal* based on, among other things, the historical and recent fiduciary relationships between Mr. Curry’s attorney Tom Browning and Judge Flournoy. Those facts resulting in *cause* for Judge Flournoy’s recusal existed before and through April 15, 2021 until present.

5.

The actual *Temporary Order* was entered by the Court on April 19, 2021. (**Exhibit 3**). On and before that date, there had been an open Division of Family and Children Services of the Department of Human Services (DFCS) case regarding the minor child. On April 20, 2021, the Guardian Ad Litem in this matter had a 30-minute conference call with DFCS. (**Exhibit 4**).

After multiple inquiries on May 26, 2021, the Guardian Ad Litem claimed that she did not know what date that the DFCS case was closed. (**Exhibit 5**). If it is in fact true that the GAL does not know what date the DFCS case was closed in this matter, then it is clear that the DFCS case was still open on April 20, 2021.

I. Rule of Law

Pursuant to O.C.G.A. § 9-11-60(d) A motion to set aside may be brought to set aside a judgment based upon:

- (1) Lack of jurisdiction over the person or the subject matter;
- (2) Fraud, accident, or mistake or the acts of the adverse party unmixed with the negligence or fault of the movant; or
- (3) A nonamendable defect which appears upon the face of the record or pleadings. Under this paragraph, it is not sufficient that the complaint or other pleading fails to state a claim upon which relief can be granted, but the pleadings must affirmatively show no claim in fact existed.

...

Subsection (f) of that code section further states: "A judgment void because of lack of jurisdiction of the person or subject matter may be attacked at any time."

II. *Void for Lack of Jurisdiction Over the Subject Matter*

Mr. Curry filed his *Petition For Equitable Caregiver Status, Custody and/or Visitation* pursuant to O.C.G.A. § 19-7-3.1, and subsection (i) states that this code section "**shall not authorize an original action so long as the Division of Family and Children Services of the Department of Human Services has an open child welfare and youth services case involving such child or his or her parent.**".

The actual *Temporary Order* was entered by the Court on April 19, 2021. (**Exhibit 3**). On and before that date, there had been an open DFCS case regarding the minor child. On April 20, 2021, the Guardian Ad Litem in this matter had a 30-minute conference call with DFCS.

(**Exhibit 4**). After multiple inquiries on May 26, 2021, the GAL claimed that she did not know what date that the DFCS case was closed. (**Exhibit 5**). If it is in fact true that the GAL does not know what date the DFCS case was closed in this matter, then it is clear that the DFCS case was still open on April 20, 2021 and this Court's *Temporary Order* is **void**. This is also a *nonamendable* defect on the face of the record as (i) the closure of the DFCS does not relate back to the original petition and (ii) the GAL in this action interfered with the DFCS investigation prior to the DFCS case closing on April 21, 2021.

III. Void for Fraud, Accident, or Mistake And the Acts of the Adverse Party

The *Temporary Order* was fraudulently obtained through abuse of the judicial process. Specifically, the Honorable Judge Flournoy granted Tom Browning's request for a finding on standing without even reading or considering Father's First Answer and Affidavit, which were filed the same day of the hearing—even though they are not technically due until June 12, 2021. Judge Flournoy has since been removed from these cases pending Plaintiff's *Motion(s) for Recusal* recently filed. If Judge Flournoy cannot consider any motions in these cases moving forward then it can only be in the interest of justice that Judge Flournoy's previous *Temporary Order*, and all findings therein, be vacated and set aside until it can be fully and fairly considered by an unbiased judicial officer and trier of fact.

Conclusion

In light of the above, and considering the intent of the legislature made apparent in O.C.G.A. § 19-7-3.1(i), this Court's *Temporary Order* in both companion cases, Case No. 21-1-01795 and Case No. 21-1-02536, must be vacated and set aside.

WHEREFORE Plaintiff prays that this Court:

- (a) Vacate and/or set aside the previous orders entered in this action by the Honorable Judge Flournoy in Case No. 21-1-01795 and Case No. 21-1-02536.
- (b) Dismiss Case No. 21-1-02536 for lack of subject matter jurisdiction, nonamendable defect, lack of ripeness and fraud, accident and/or mistake caused by this Court's own impropriety mixed with the actions of counsel for Christopher Curry.
- (c) Enter an order with at least the same rights and duties as outlined in Exhibits 1 & 2.
- (d) Grant Plaintiff such other and further relief as the Court deems just and proper.

This 9th Day of June 2021.

MATTHEW D. MCMASTER, LLC
12 Powder Springs St.
Suite 250
Marietta, GA 30064
Phone: (800) 890-3981
Fax: (800) 890-3981

/s/ Matthew D. McMaster
Matthew D. McMaster
Georgia Bar No. 218044
Attorney for Plaintiff

CERTIFICATE OF SERVICE

This is to certify that on the date the foregoing was e-filed with the Clerk of Superior Court, all parties, or specified parties below, were served with copy via PeachCourt electronic service

tj@browningsmith.com

dcanale@mtlawoffice.com

lch@odelloneal.com

thomas.davis@cobbcounty.org

This 9th Day of June 2021.

MATTHEW D. MCMASTER, LLC
12 Powder Springs St.
Suite 250
Marietta, GA 30064
Phone: (800) 890-3981
Fax: (800) 890-3981

/s/ Matthew D. McMaster
Matthew D. McMaster
Georgia Bar No. 218044
Attorney for Plaintiff

Exhibit 1

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

ID# 2021-0025775-CV
FILED IN OFFICE
CLERK OF SUPERIOR COURT
COBB COUNTY, GEORGIA
15103024
Robert E. Flournoy III - 40
MAR 01, 2021 04:56 PM



Connie Taylor, Clerk of Superior Court
Cobb County, Georgia

JONATHAN RIVERA,)
)
Plaintiff,)
)
v.)
)
GINA SCHARLE,)
)
Defendant.)


CASE NO. 15-1-3024-40

EX-PARTE ORDER GRANTING TEMPORARY MODIFICATION OF CUSTODY

This matter came before the Court for a hearing pursuant to Uniform Superior Court Rule 6.7 on March 1, 2021 regarding Plaintiff's *Emergency Motion For Modification Of Custody And Motion For Contempt*, which was filed on February 23, 2021, with Plaintiff present and represented by counsel. Defendant, Gina Scharle, was not present. Having reviewed the motion and record, and having heard from Plaintiff's counsel, the Court hereby grants temporary primary custody to Plaintiff for the purpose of addressing the emergency circumstances. This Order supersedes all previous orders regarding Plaintiff-Father's and Defendant-Mother's custody and visitation rights over the minor child, until otherwise ordered at a later date by this Court or other court of proper jurisdiction. Pursuant to this Court's authority, the Court hereby orders that the Sheriff of Cobb County shall, by request of the Plaintiff-Father, escort Plaintiff-Father to the last known address of Defendant-Mother, and where the minor child presently resides, located at 5870 Edenfield Ct. NW, Acworth, GA 30101, to ensure that Plaintiff obtains possession and custody of the minor child, **Giana Scharle**.

The issue of contempt will be addressed at a later date and the Court declares that any permanent change of custody must be accomplished by filing a separate action in a court of proper jurisdiction.

SO ORDERED this 1st day of March 2021.



Judge, Superior Court of Cobb County

Prepared and presented by:


/s/ Matthew D. McMaster
Attorney for Plaintiff
GA Bar No. 218044

Matthew D. McMaster, LLC
12 Powder Springs St.
Suite 250
Marietta, GA 30064
Phone: (770) 362-6490
Fax: (800) 890-3981
mdmcmaster@mcmasterlegal.com

Exhibit 2

THE SUPERIOR COURT FOR THE COUNTY OF COBB

STATE OF GEORGIA


Connie Taylor
Clerk of Superior Court Cobb County

JONATHAN RIVERA O/B/O MINOR]
CHILD GIANA SCHARLE]
Petitioner,]
v.]
CHRIS CURRY]
Respondent.]

Civil Action File
No. 21-17742-99

FAMILY VIOLENCE EX PARTE PROTECTIVE ORDER

The Petitioner having prayed, pursuant to O.C.G.A. §§ 19-13-1 et seq., that a Protective Order be issued; and alleged that Respondent has committed acts of Family Violence and that Petitioner is in reasonable fear of the Petitioner's safety and the safety of Petitioner's minor child; and it appearing to the Court that probable cause exists that family violence has occurred in the past and may occur in the future, IT IS HEREBY ORDERED AND ADJUDGED:

1. That these proceedings be filed in the office of the Clerk of this Court.
2. That this Order applies in every county throughout the state and it shall be the duty of every court and every law enforcement official to enforce and carry out the provisions of this Order pursuant to O.C.G.A. § 19-13-4(d). Law Enforcement officers may use their arrest powers pursuant to O.C.G.A. §§ 19-13-6 and 17-4-20 to enforce the terms of this Order.
3. That a copy of this Order be given to law enforcement and the Respondent be served with a copy of this Order and Petition for Temporary Protective Order instantler.
4.



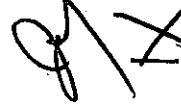
That the Respondent appear before the presiding Judge on the 30th day of March, 2021 at 9:00 AM in courtroom M403 of the Cobb County Courthouse at 32 Waddell Street, Marietta, GA to show cause why the requests of the Petitioner should not be granted. See Exhibit A for an alternative method of appearance.
5. That Respondent is hereby enjoined and restrained from doing, or attempting to do, or threatening to do, any act of injury, maltreating, molesting, following, harassing, harming or abusing the Petitioner and Petitioner's minor child in any manner. Respondent is not to interfere with Petitioner's travel, transportation, or communication. Respondent shall not follow, place under

pco 01

surveillance, or contact the Petitioner at any place of the Petitioner for the purpose of harassing and intimidating the Petitioner.

6. That the Respondent is enjoined and restrained from doing or threatening to do any act of injury, maltreating, molesting, harassing, harming, or abusing the Petitioner's family or household.
7. That this Court determined that it had jurisdiction over the parties and the subject matter under the laws of the State of Georgia and the Court ordered that the Respondent be given reasonable notice and opportunity to be heard sufficient to protect the Respondent's due process rights. This Order shall be presumed valid and pursuant to 18 U.S.C. § 2265(a) shall be accorded **full faith and credit** by any other state or local jurisdiction and shall be enforced as if an Order of the enforcing state or jurisdiction.

ONLY THE FOLLOWING THAT ARE INITIALED BY THE JUDGE SHALL APPLY.

- — 8. That until further Order by this Court, Petitioner is awarded sole and exclusive use of the family residence at _____.
- — 9. Respondent is ordered to leave the family residence immediately and law enforcement (sheriff's department) is ordered to assist Petitioner in returning to the family residence and the removal of the Respondent. Respondent is to immediately surrender to law enforcement (sheriff's department) all and any keys, garage door openers and other security devices to the family residence and law enforcement is to insure that these are given to the Petitioner.
- — 10. Respondent is ordered to provide suitable alternate housing for Petitioner and/or Petitioner's child by: _____.
-  X 11. Petitioner's address is ordered to be kept confidential.
-  X 12. Respondent is ordered to stay away from Petitioner's and Petitioner's minor child's residence at **Confidential** and workplace or school and any subsequent residence or workplace or school of Petitioner and Petitioner's minor child.
-  X 13. That until further Order of this Court, Respondent is restrained and enjoined from approaching within 500 yards of Petitioner and Petitioner's minor child.

pco 02

pco 03

pco 04

pco 01
pco 04

JB X

X

14. Respondent is ordered not to have any contact, direct, indirect or through another person with Petitioner and Petitioner's minor child, by telephone, pager, fax, e-mail or any other means of communication except as specified in this Order.

15. That Petitioner is awarded temporary custody of the minor child, namely:

Respondent is ordered not to interfere with the physical custody of the child.

Initial here *only if Respondent* is awarded temporary custody of the child.

16. That Respondent is ordered to pay temporary child support for the minor child to Petitioner in the amount of \$ _____ every _____ beginning _____.

All payments shall be made by or to: _____ income deduction order
_____ child support receiver
_____ by mail directly to the Petitioner
or _____

17. That Respondent is ordered to pay temporary support for the Petitioner in the amount of \$ _____ every _____ beginning _____ All payments shall be made by or to:

_____ income deduction order
_____ child support receiver
_____ by mail directly to the Petitioner
or _____

18. That Respondent, **only when accompanied by local law enforcement**, shall be able to remove his/her clothing and personal items from the residence as follows: _____ on a date to be determined by the Cobb County Sheriff's Office or any other law enforcement agency.

19. That (Respondent)(Petitioner)(both Respondent and Petitioner) [strike through appropriate] is/are ordered not to sell, encumber, trade, damage, contract to sell, or otherwise dispose of or remove from the jurisdiction of this Court any of the property or pets of the Petitioner or joint property or pets of the parties except in the ordinary course of business.

— — 20. That (Respondent)(Petitioner)(both Respondent and Petitioner) [strike through appropriate] is/are ordered not to disconnect or have disconnected the home utilities, change or have changed and/or cancel or have canceled auto, health or life insurance for Respondent, Petitioner, and Petitioner's minor child, or interfere with Respondent's, Petitioner's and Petitioner's minor children's mail.

— — 21. That Petitioner is awarded temporary sole possession of the vehicle: Make _____ Model _____ Year _____ Color _____. Respondent shall immediately surrender all keys, proof of insurance, and registration to this vehicle to law enforcement, and law enforcement shall immediately turn over said items to Petitioner.

— — 22. That Petitioner shall be allowed to remove the following property from the family residence for Petitioner's and Petitioner's minor children's use _____ on a date to be determined by the Cobb County Sheriff's Office or any other law enforcement agency.

— — 23. That Respondent shall be required to return the following property for Petitioner's and Petitioner's minor children's use: _____ on a date to be determined by the Cobb County Sheriff's Office or any other law enforcement agency.

[Handwritten signature] ~~X~~ ~~X~~

24. It is further ordered:
1. Cobb County Sheriff's Office or any other law enforcement agency or sheriff's office will assist the petitioner in ensuring that all portions of this order of the court are fully complied with.
2. Respondent may not possess any firearms while under a TPO.
3. Cobb County Sheriff's Office shall take possession of the Respondent's weapons for safekeeping.

SO ORDERED this 5th day of March, 2021.

JAMES G. BODIFORD, SENIOR JUDGE
SUPERIOR COURTS OF GEORGIA
PRESIDING IN COBB JUDICIAL CIRCUIT

[Handwritten signature]

JUDGE, SUPERIOR COURT
Cobb County

Print or stamp Judge's name

Violation of the above Order may be punishable by arrest.

NOTICE TO RESPONDENT

1. **Violation of this Order may result in immediate arrest and criminal prosecution that may result in jail time and/or fines and/or may subject you to prosecution and penalties for contempt of court.**
2. **This Order shall remain in effect unless specifically superseded by a subsequent signed and filed Order, by operation of law, or by Order of dismissal, whichever occurs first. Only this Court can void, modify or dismiss this Order. Either party may ask this Court to change or dismiss this Order.**
3. **A person commits the offense of Aggravated Stalking when such person, in violation of a temporary or permanent protective Order prohibiting this behavior, follows, places under surveillance, or contacts Petitioner on public or private property for the purpose of harassing and intimidating the other person. This activity can subject the Respondent to arrest and prosecution for felony Aggravated Stalking, which carries penalties of imprisonment for not less than 1 year nor more than 10 years and a fine of up to \$10,000.00.**

Exhibit A

Due to the current Judicial Emergency Order, Temporary Protective Order proceedings will be held via video conferencing. Participants may still appear in person, but are encouraged to participate via video conferencing. You may log in from any smartphone or electronic device that has a microphone and a camera. (Chromebook is not supported by the videoconferencing platform). Use of a headset is preferred as it will enhance audio quality for all participants. In order to avoid interference and feedback, please avoid logging into two separate devices which are in close proximity to one another.

If you would like to appear virtually via video conference, please contact Raysa Figaro at liveSAFE Resources Temporary Protective Order Office by phone at 770-528-8024 or email at rfigaro@livesaferesources.org and provide a valid email address where the invite can be sent.

If you do not have an electronic device, internet or wi-fi capability, or you have difficulty logging in, please contact Raysa Figaro with liveSAFE Resources, Inc. via email rfigaro@livesaferesources.org.

Witnesses

If you have witnesses who you would like to call to testify during your hearing, you will be able to forward the email invite to them.

Evidence & Exhibits

Instructions for presenting evidence and exhibits:

1. Proposed exhibits should be e-mailed to TPOevidence@cobbcounty.org in advance of the hearing.
2. Please include your first and last name, Case Number, and the date and time of your hearing in the subject line of the e-mail sent to Court staff.
3. Court staff will verify that each exhibit can be opened and then confirm receipt. If there is a technical problem with an exhibit, Court staff will inform the sender.
4. If there is an attorney on the other side of the case, she or he should be copied on the e-mail of exhibits sent to Court staff.
5. If there is not an attorney on the other side of the case, Court staff will e-mail all proposed exhibits to the opposing party on the morning of the hearing.
6. The judge will review proposed exhibits at the appropriate time during each hearing.
7. Court staff and the judge will delete received copies of all proposed and admitted exhibits after the conclusion of court session.

Things to note for your hearing

- Try to find a quiet place with no distractions or background noise room with a strong internet connection. Be mindful of what is visible around you on video.
- Open the link a few minutes prior to the start of the hearing to give yourself enough time to download any software. There are no costs associated with the technology, and you may need to allow the application permission to use your camera and microphone.
- While you may be able to conduct the hearing at home, it is still happening in an open courtroom. Please conduct yourself accordingly.

Exhibit 3



Connie Taylor, Clerk of Superior Court
Cobb County, Georgia

**IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA**

**JONATHAN RIVERA,
Plaintiff / Father,**

v.

**GINA SCHARLE,
Defendant / Mother.**

Civil Action File Number

21101795

**CHRISTOPHER CURRY,
Plaintiff / Equitable
Caregiver,**

v.

**JONATHAN RIVERA-CUEVA,
Defendant / Father &
GINA SCHARLE,
Defendant / Mother.**

Civil Action File Number

21102536

Temporary Order

After a hearing on April 15, 2021 via videoconferencing, at which all Parties appeared represented by counsel, along with the Guardian Ad Litem, the following provisions are made the temporary Order of this Court:

1. This case concerns the minor child **GIANA NICOLE SCHARLE**, born in 2005. Jonathan Rivera is the child's father. Gina Scharle is the child's mother. Christopher Curry has filed a petition to be declared the child's equitable caregiver.

2. Curry has fulfilled the requirements of O.C.G.A. § 19-7-3.1(b) and has established standing to maintain his action to be adjudicated to be an equitable caregiver of the child. In the alternative, pursuant to § 19-7-3.1(f), this Court grants Curry standing on the basis of Mother consenting to Curry having a parental relationship with the child. Therefore, this Court may now establish parental rights and responsibilities for Curry in regard to the child, including, but not limited to, custody.

3. On a temporary basis, the three Parties shall have joint physical custody of the child by alternating weeks, as follows:
 - Rivera currently has physical custody of the child.
 - On April 15, 2021 at 4:15pm, Father shall drop off the child at the Guardian Ad Litem's office. Father shall also drop off the child's personal effects and Curry's phone and laptop at the Guardian's office. (Thereafter, Curry may pick up his phone and laptop from the Guardian's office, unless the Parties come up with another way to get the phone and laptop back to Curry.)
 - At all times, the Parties shall cooperate and coordinate with each other to ensure that the child has her personal effects, including Curry providing the child with enough contact lenses and a laptop with which to do schoolwork.
 - The Guardian shall interview the child at her office on April 15 at 4:30pm. After the interview, at 5pm, Mother shall pick up the child from the Guardian's office to begin her custody week.
 - Mother shall then have physical custody of the child until Thursday, April 22, 2021 – on that day, Curry shall assume physical custody of the child by picking up the child from school when the child is released for the day (or, if there is no school or virtual school, by picking the child up at Mother's residence at 4pm).

- Curry shall then have physical custody of the child until Thursday, April 29, 2021 – on that day, Father shall assume physical custody of the child by picking up the child from school when the child is released for the day (or, if there is no school or virtual school, by picking the child up at Curry’s residence at 4pm).
 - Thereafter, the Parties shall continue to alternate possession of the child on a weekly basis as described above. The exchange of custody shall occur on every Thursday. The Party assuming custody will pick up the child from school when the child is released for the day or, if there is no school or virtual school, will pick up from the previous physical custodian’s residence at 4PM.
 - The child has plans to travel to Orlando, Florida for The Summit, a cheerleading competition, from April 29 through May 4, 2021. Curry will assume physical custody of the child for that time period, shall transport the child to and from the competition, and shall be solely responsible for providing for the child during the competition. (The logistics of this travel may mean that it would not make sense for Father to take physical custody of the child on April 29 – it may make more sense for Curry to simply keep the child until after the competition. The Parties are directed to work this issue out amongst themselves.) Curry shall return the child to Father’s physical custody after the competition, on May 4, 2021. Curry shall communicate with Father via text to keep Father informed of the custody-exchange timing and logistics.
 - During their periods of physical custody, the Parties are obligated to transport the child to and from all of her cheer-related practices and events.
4. Each Party and the Guardian Ad Litem shall have free and open access to the child’s school records and may discuss school-related matters with the child’s teachers and school administrators.

Pursuant to O.C.G.A. § 20-2-780, the child's schools are specifically authorized and directed to release custody of the child to either Party when that Party is authorized by this Order (or otherwise authorized by law) to assume physical custody of the child. All Parties and the Guardian Ad Litem shall have access to the child's high school portal. This Order shall operate as a **RELEASE** to allow the child's high school guidance counselor to discuss the child with the Guardian Ad Litem, including any information deemed privileged or confidential by HIPAA or otherwise.

5. Each Party shall be responsible for paying one-third of the child's cheerleading-related expenses. Each month, Curry shall pay the fee for Stingray Marietta. Curry shall then provide the other Parties with a document showing that payment, and the other Parties shall then reimburse Curry their responsible portions.
6. Each Party shall submit to a full-panel urine drug screen at the Cobb County Drug Lab (at the Cobb County Superior Courthouse) before 10AM on April 16, 2021.
7. At this time, this Court does not impose a child support obligation on any Party.
8. The Parties shall treat each other with courtesy, dignity, and respect and may not argue or fight in the presence of the child. The Parties may not disparage each other to or in the presence of the child.
9. This custody order replaces and supersedes all other previous custody orders concerning the child.

SO ORDERED this day of April 16, 2021,
nunc pro tunc to April 15, 2021.


Judge Robert E. Flounoy, III

Certificate of Service

_____ This is to certify that the foregoing document was filed with the Clerk of Superior Court, and copies of the filed document were placed into the Court's mail system to be mailed via United States mail or Interdepartmental Mail or Electronic Mail to:



_____ This is to certify that on the date the foregoing document was e-filed with the Clerk of Superior Court, all parties, or the specified parties below, were served with a copy via PeachCourt electronic service

- mdmcmaster@mcmasterlegal.com
- dcanale@mtlawoffice.com
- lch@odelloneal.com
- tj@browningsmith.com

Christa Flint
Judicial Administrative Assistant to
Judge Robert E. Flournoy, III

Exhibit 4



O'Dell, O'Neal Hungerford & Blanchard
 506 Roswell Street, Suite 210
 Marietta, Georgia 30060
 (770)405-0164
 www.odelloneal.com

Miss Giana Scharle

Invoice

Invoice Number	1987
Invoice Date	05/17/2021
Payment Due On	05/27/2021
Amount Due	\$2,807.00

Jonathan Rivera v. Gina Scharle – Scharle – Guardian ad Litem – Family

Fees

Date	Subject	Staff	Rate	Hours	Total
04/19/2021	E-mail to counsels.	LCH	\$175.00	0.20	\$35.00
04/19/2021	Phone call with Giana Scharle.	LCH	\$175.00	0.20	\$35.00
04/19/2021	Receipt and review of e-mail from D. Canale.	LCH	\$175.00	0.20	\$35.00
04/19/2021	Review and respond to e-mail from T. Browning.	LCH	\$175.00	0.20	\$35.00
04/19/2021	received & reviewed e-mails	KM	\$105.00	0.20	\$21.00
04/20/2021	E-mail to Cobb County.	LCH	\$175.00	0.20	\$35.00
04/20/2021	Phone conference with DFCS.	LCH	\$175.00	0.50	\$87.50
04/20/2021	Receipt and review of order.	LCH	\$175.00	0.20	\$35.00
04/20/2021	Review and respond to e-mail from Chris Curry.	LCH	\$175.00	0.20	\$35.00

04/20/2021	emails with counseling office at harrison to schedule meeting with child at school; emails to LCH; add appointment to calendar	AM	\$125.00	0.50	\$62.50
04/21/2021	Phone call with T. Browning.	LCH	\$175.00	0.20	\$35.00
04/21/2021	Phone conference with C. Curry.	LCH	\$175.00	1.00	\$175.00
04/21/2021	Receipt and review of e-mail from M. McMaster.	LCH	\$175.00	0.20	\$35.00
04/21/2021	Receipt and review of e-mails.	LCH	\$175.00	0.10	\$17.50
04/21/2021	Review and respond to e-mail from M. McMaster.	LCH	\$175.00	0.20	\$35.00
04/21/2021	e-mail to Mr. Curry	KM	\$105.00	0.10	\$10.50
04/21/2021	telephone call DFACS regarding case file and requesting records	TLE	\$125.00	0.10	\$12.50
04/22/2021	Meeting with child.	LCH	\$175.00	0.70	\$122.50
04/22/2021	Phone conference with C. Curry.	LCH	\$175.00	0.40	\$70.00
04/22/2021	Receipt and review of e-mails.	LCH	\$175.00	0.20	\$35.00
04/22/2021	Review and respond to e-mails from M. McMaster.	LCH	\$175.00	0.30	\$52.50
04/22/2021	phone call from Chris; memo to attorney	KH	\$105.00	0.20	\$21.00
04/22/2021	phone call to chris curry; add appointment to calendar	AM	\$125.00	0.20	\$25.00
04/22/2021	telephone call to DFACS regarding case file (left message)	TLE	\$125.00	0.10	\$12.50
04/23/2021	Phone call with M. McMaster.	LCH	\$175.00	0.50	\$87.50
04/23/2021	Receipt and review of e-mails.	LCH	\$175.00	0.10	\$17.50
04/23/2021	Receipt and review of e-mails.	LCH	\$175.00	0.20	\$35.00
04/23/2021	emails with DFACS regarding records for Giana Scharle	TLE	\$125.00	0.20	\$25.00
04/23/2021	receipt and review of e-mail from counsel.	LCH	\$175.00	0.20	\$35.00
04/26/2021	Phone conference with T. Browning.	LCH	\$175.00	0.40	\$70.00
04/26/2021	Receipt and review of e-mail.	LCH	\$175.00	0.20	\$35.00
04/26/2021	Review and respond to e-mail from M. McMaster.	LCH	\$175.00	0.20	\$35.00

04/26/2021	email to DFACS regarding appointment for LCH to review case file	TLE	\$125.00	0.30	\$37.50
04/27/2021	Receipt and review of e-mail from C. Curry.	LCH	\$175.00	0.20	\$35.00
04/27/2021	emails with Ms. North, Administrative Support for DFACS, for purposes of scheduling meeting for LCH to review file; review of calendar; schedule tentative meeting	TLE	\$125.00	0.30	\$37.50
04/30/2021	Phone conference with Giana.	LCH	\$175.00	0.20	\$35.00
04/30/2021	Receipt and review of e-mail from T. Browning.	LCH	\$175.00	0.20	\$35.00
04/30/2021	Receipt and review of e-mail.	LCH	\$175.00	0.20	\$35.00
04/30/2021	Receipt and review of e-mails.	LCH	\$175.00	0.10	\$17.50
04/30/2021	Review and respond to e-mails from counsel.	LCH	\$175.00	0.30	\$52.50
05/03/2021	Receipt and review of e-mails from C. Curry.	LCH	\$175.00	0.20	\$35.00
05/04/2021	Phone call with C. Curry. E-mail to M. McMaster.	LCH	\$175.00	0.40	\$70.00
05/04/2021	Receipt and review of e-mail.	LCH	\$175.00	0.20	\$35.00
05/04/2021	Receipt and review of e-mails from C. Curry.	LCH	\$175.00	0.30	\$52.50
05/05/2021	Receipt and review of e-mails from Giana.	LCH	\$175.00	0.20	\$35.00
05/05/2021	Receipt and review of voicemail from C. Curry. E-mail to C. Curry.	LCH	\$175.00	0.20	\$35.00
05/05/2021	Review and respond to e-mails from M. McMaster.	LCH	\$175.00	0.20	\$35.00
05/06/2021	E-mail to counsels.	LCH	\$175.00	0.20	\$35.00
05/06/2021	Meeting with Giana at Harrison HS.	LCH	\$175.00	1.00	\$175.00
05/06/2021	Receipt and review of e-mail.	LCH	\$175.00	0.20	\$35.00
05/07/2021	Correspondence with Giana.	LCH	\$175.00	0.20	\$35.00
05/12/2021	E-mail to C. Curry.	LCH	\$175.00	0.20	\$35.00
05/12/2021	Review and respond to e-mails from counsel.	LCH	\$175.00	0.20	\$35.00

05/13/2021	email to high school guidance counselor to arrange phone conference with LCH	AM	\$125.00	0.20	\$25.00
05/14/2021	email to LCH and LAM	TLE	\$125.00	0.10	\$12.50
05/14/2021	emails with school counselor; review of calendar; schedule meeting with counselor and LCH	TLE	\$125.00	0.20	\$25.00
					\$2,082.50

Subtotal	\$2,410.00
Write Offs	-\$327.50
Total	\$2,082.50
Prior Balances	\$3,323.50
Payments received since last invoice	-\$2,599.00
Total Balance Due	\$2,807.00

Prior Balances

Date	Invoice Number	Due Date	Amount	Payments	Due
04/19/2021	1868	04/29/2021	\$3,323.50	\$2,599.00	\$724.50
Total			\$3,323.50	\$2,599.00	\$724.50

Payment Summary

Date	Note	Paid By	Source	Amount
04/19/2021		Christopher Curry	Trust	\$833.00
04/19/2021		Jose Rivera	Trust	\$883.00
04/27/2021		Christopher Curry	Trust	\$883.00

If you have any questions or concerns after receiving this invoice, please contact us. Client agrees that after ten (10) days from the date of each bill, if Client has not provided the firm with a written protest or notice of dispute, then the bill is deemed to be correct. We cannot correct or adjust invoices after the billing period expires. The contents of this invoice may be protected by attorney-client privilege. If you have received this invoice in error, please delete or destroy immediately.

Invoice Summary

Date	Invoice Number	Amount	Payments	Due
04/19/2021	1868	\$3,323.50	\$2,599.00	\$724.50
05/17/2021	1987	\$2,082.50	\$0.00	\$2,082.50
Total		\$5,406.00	\$2,599.00	\$2,807.00

Account Summary

Account Name	Balance
Trust	\$0.00

Exhibit 5

RE: PeachCourt - STATUTORY ELECTRONIC SERVICE: Cobb Superior Case #21101795

1 message

Leslee Hungerford <lch@odelloneal.com>

Wed, Jun 2, 2021 at 1:42 PM

To: "mdmcmaster@mcmasterlegal.com" <mdmcmaster@mcmasterlegal.com>

Matt,

I do not have that information. As I have repeatedly told you, I do not have a copy of the DFCS file and I was only able to review parts of the file at the DFCS office with the case worker. I have spoken to both the case worker and case manager regarding this case. My understanding in speaking with the case worker is that the case has been closed. I do not have an exact date as to when the file was closed by DFCS.

Since you and your client have specific questions regarding the file - I have subpoenaed the DFCS file to the hearing. You have made conflicting statements as to your clients involvement in the matter. At one time you stated your client did not make the referral and then you have also stated that he has made a referral. As I stated before, the only way to review a DFCS file is to subpoena it and get an in camera inspection. If you have any questions please feel free to reach out to Sanders Deen of Cobb DFCS. He can explain to you what information the GAL is allowed to obtain and what the process is to review the file.

I have stated that I do not think it is appropriate for your client to tell the child that she has been sexually molested or that she is being groomed to be sexually molested. Neither you nor your client has produced any evidence to suggest the child has sexually assaulted. I have spoken with DFCS, Cobb County Detective with crimes against children, the school counselor, and the child. Your client additionally took the child to be medically examined. NO ONE found any evidence of sexual abuse. I think it is completely inappropriate to continue to suggest a child has been sexually abused when there is no evidence to support it.

Thanks,

Leslee Champion Hungerford



CONFIDENTIALITY NOTICE

This message is being sent by or on behalf of a lawyer. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

From: mdmcmaster@mcmasterlegal.com <mdmcmaster@mcmasterlegal.com>
Sent: Wednesday, June 02, 2021 1:22 PM
To: Leslee Hungerford <lch@odelloneal.com>
Subject: Fwd: PeachCourt - STATUTORY ELECTRONIC SERVICE: Cobb Superior Case #21101795

Leslee,

I still haven't heard from you regarding when this DFCS file was closed?

You have demanded multiple times that I not bring up potential sexual abuse so I am also unclear as to why you are involving DFCS at the next hearing. However, I think it is VERY important that we lay those matters to rest so regardless of what I thought your position to be, I am thankful you are looking into it more thoroughly.

Best,

Matthew D. McMaster, Esq.

Sent from my iPhone

Begin forwarded message:

From: PeachCourt Notifications <notifications@peachcourt.com>
Date: June 2, 2021 at 12:51:47 PM EDT
To: tj@browningsmith.com, dcanale@mtlawoffice.com, vrichardson@mtlawoffice.com, jpaynter@mtlawoffice.com, amytrice@mtlawoffice.com, tammi@mtlawoffice.com, jmcsherry@mtlawoffice.com, jspurlin@mtlawoffice.com, cshipp@mtlawoffice.com, mdmcmaster@mcmasterlegal.com
Subject: PeachCourt - STATUTORY ELECTRONIC SERVICE: Cobb Superior Case #21101795

You are receiving an ELECTRONIC SERVICE COPY of the following filing. We invite you to reply to this message if you

have any questions.

Filing Date: 6/2/2021 at 11:45 AM
Filer: Leslee Hungerford
Peach #: E-MQDPSMBX
Case #: 21101795
Assigned Judge: Robert E. Flourney III - 40
Case Name: RIVERA JONATHAN v SCHARLE GINA
Court: Cobb County Superior

A file-stamped copy of each document is available for you to download. The download link is available for 30 days from the time this message was sent.

If the links below are not clickable, please copy and paste each link into your browser.

Affidavit | Affidavit of Service | <https://peachcourt.com/Redirect?id=QFWMQS3C>

Related Case Information

Case #: 15-1-03024
Judge: Robert E. Flourney, III
Parties: Jonathan Rivera v Gina Scharle
Brief description of similarities: Contempt, Custody and Support

If you are an attorney and you haven't taken advantage of PeachCourt, Georgia's eFiling and Document Access solution, then we invite you to register for your free account at <https://peachcourt.com>.

PeachCourt is powered by a partnership between the Council of Superior Court Clerks of Georgia and GreenCourt Legal Technologies, LLC.

We are here to help! Reach out however you like:

Reply to this message
Call toll-free 844-GA-EFILE
Chat at <https://www.peachcourt.com/>
Learn a lot at <http://awesome.peachcourt.com/>